IN THE COUNTY COURT OF VICTORIA

Revised
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AT MELBOURNE
CRIMINAL JURISDICTION

CR 19-00985

DIRECTOR OF PUBLIC PROSECUTIONS

v

TALA JOSEPH AUGA MATAMATA

JUDGE:	HIS HONOUR JUDGE McINERNEY
WHERE HELD:	Melbourne
DATE OF HEARING:	2 September 2020
DATE OF SENTENCE:	24 September 2020
CASE MAY BE CITED AS:	DPP v MATAMATA
MEDIUM NEUTRAL CITATION:	[2020] VCC 1538

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Sentence – Pleas of guilty – Seven charges of theft – Seven charges of obtain property by deception – Fuel cards - Blue

	collar financial crime – Breach of trust – Employer and employee – No prior convictions – Gambling addiction - *Boulton* principles applied - Combined sentence of imprisonment and community correction order – Compensation order
Legislation Cited:	s. 74, s. 82(1) *Crimes Act 1958* - s.44 *Sentencing Act 1991*
Cases Cited:	*R v McLean* (2000) 2 VR 118 – *DPP v Dwyer* [2015] VCC 554, *DPP v Fusea* [2016] VCC 1708, *DPP v Kashani* [2019] VCC 1669, *DPP v Burgess* [2019] VCC 1742 - *DPP v Lloyd* [2017] VCC 1417 - *DPP v Bulfin* [1998] 4 VR 114 - *SD v R* [2013] VSCA 133 - *Dalgliesh* [2017] 91 ALJR 1063 – *DPP v Bourke* [2020] VSC 130 - *Guden v The Queen* [2010] VSCA 196 - *Boulton v The Queen* [2014] VSCA 342 - *R v O'Neill* [2003] VSCA 26
Sentence:	Total effective sentence of 12 months imprisonment. Convicted and ordered to serve a community correction order for a period of two years with conditions. Order commences upon completion of imprisonment. Compensation order in the sum of $130,211.51 to Fulton Hogan Industries Pty Ltd.

APPEARANCES:	Counsel	Solicitors
For the Director of Public Prosecutions	Mr D. Porceddu	Office of Public Prosecutions
For the Accused	Mr J. Behan	Stary Norton Halphen Criminal Lawyers

HIS HONOUR:

1 Mr Tala Alexander Joseph Auga Matamata appeared before the Court on the 2nd day of September 2020 and pleaded guilty to the 14 charges in Indictment No.K10265338. On that day, Mr Behan appeared for him, as he does today and Mr Porceddu appeared on behalf of the Director, as he also does today. Mr Matamata is aged 35. During the period of this criminality, he was aged between 32 and 34, having been born on the 20th day of November 1984. At the time, he was employed by Fulton Hogan Industries Pty Ltd. He is currently employed by United Civil Works.

2 The prosecution opening, was tendered as Exhibit A and the facts therein were accepted by Mr Behan as the facts upon which I am to sentence his client. Essentially I will deal with them in the tranches that they relate to. That is, for example, Charge 1 and 8 and I will deal with them accordingly in that manner. It is important to remember that insofar as each of the deception charges is concerned, they are rolled up charges of a number of transactions occurring within the month set out in each particular charge. Being rolled up charges, the principles set out in *R v O'Neill* [2003] VSCA 26, [28], apply.

3 Each tranche of two charges involves a charge of theft under s.74 of the *Crimes Act* and a charge of obtaining financial advantage by deception under s.82(1) of the *Crimes Act*. Each of those separate charges and indeed, every charge in this indictment brings with it a maximum penalty prescribed by Parliament of 10 years imprisonment. That in itself is an indicator of the seriousness of each of the 14 charges.

4 The background, of course, as set out in Exhibit A, is the theft of fuel cards from his then employer by Mr Matamata. Mr Matamata arranged with Mr Nguyen, who had a business and a number of employees, that by the use of those cards on various occasions, petrol could be obtained by Mr Nguyen's

employees. According to the opening, Mr Nguyen would pay to Mr Matamata 50 per cent of the value thereby obtained. I will come back to that question of benefit to Mr Matamata in due course.

5 The first card involved a period of criminality, involving both Charges 1 and 8, of five months, from the September 2017 to January 2018. Charge 1 was the theft of the card itself and Charge 8 was the provision to Mr Nguyen and/or his employees of petrol over that period of five months in the sum of $25,708.83. Hence the obtaining financial advantage by deception was the utilisation of the employer's card by Mr Nguyen to obtain petrol for his organisation.

6 The second tranche relates to Charges 2 and 9. The period of criminality involved is three months from February of 2018 to April of 2018. The amount obtained was $21,905.50.

7 The third and tenth charges involve a period of eight months from May of 2018 to December of 2018 and involves the sum of $62,374.45.

8 The next two charges are Charges 4 and 11, they involve the period May of 2018 through to July of 2018, being in this instance we have now got to card 4, a three month period, and involves the sum of $13,383.23.

9 Charge 5 and 12 relate to the period of December 2018 to January 2019, in that two month period, the relevant sum dispensed by way of petrol and the value of same is $2,898.20.

10 Charges 6 and 13 relate to a period of a month, January 2019 and the sum involved is $174.31.

11 The final two charges are respectively Charges 7 and 14, again, it is the same period, January of 2019, but in this instance, the sum involved is $3,762.99.

12 Each of the deception charges are for specific periods and must accordingly be so sentenced, indeed each are rolled up charges themselves. It is noted, pursuant to Exhibit A, that for the period of 17 months, which encompasses this criminality, the total sum of which was lost to Mr Matamata's employer is $130,211.51. That is the amount of which the compensation order relates, which I have signed today.

13 As I say, Mr Matamata obtained cash from Mr Nguyen for those purchases. The precise amount is uncertain, but I will come to that in due course. He was subsequently arrested on 29 January 2019 and he cooperated in a record of interview. He made admissions that he had stolen, he believed, four to five cards, each of those being subsequently cancelled, then he would steal a further card to utilise. He used each for a long time. He accepted that the totality of the criminality was, to use his words, his fault.

14 Arrangements as to a plea were finalised at the second committal mention. There was no presentence detention and Mr Matamata comes before the Court with no priors.

15 Mr Behan accepted the facts upon which I am to sentence his client as set out in Exhibit A. The first factual issue is what benefit did Mr Matamata receive from this criminality. He apparently is unsure himself, but Mr Behan submits that the sum must have been somewhere between $65,107 and $117,190. Mr Nguyen, in a statement in the depositions, said that he had paid Mr Matamata 90 per cent of the cost of petrol. Mr Matamata, however, while he was not particularly sure, believed that he had received something like 50 per cent of the cash value of the petrol purchased.

16 As to Mr Nguyen, apart from reading his statement, I do not know too much more about him. I do know he was not charged. I am not sure why, nor does it impact upon Mr Matamata's sentence. However, no doubt the fact that Mr

Matamata said in his statement that Mr Nguyen was not aware that he was using stolen cards, and that the responsibility for the criminality was totally his, may well have played a part in it. As I said, Mr Matamata himself was uncertain as to the precise amount of benefit that he had received, no doubt this was due to his gambling addiction.

17 Of course, that uncertainty does not impact on the loss to the victim, hence I have signed the appropriate order. I am not too sure of Mr Matamata's ability to pay. However, clearly from the jobs he has held, given that they have earned him over $100,000 a year, he does have capacity, provided he overcomes his gambling addiction. I say that because unfortunately, despite this criminality, he continued gambling until May of 2020, as reported to Ms Robinson, the counsellor, Exhibit 2. I accept, however, in understanding the explanation for this criminality, that gambling can be a compulsion, and it has not been put as an excuse, but by way of an explanation.

18 As to the offending I adopt the description in the further prosecution submissions Exhibit C, set out at [1]. It was at no time dissented by Mr Behan, that this can only be described as serious offending. The facts leading to that conclusion, are set out in such document at [1] as follows:

i) The quantum is significant. As I said, the total of each of these individual seven crimes amounts to $130,000;

ii) The offending went over a 17 month period, leading to the submission that it was not isolated;

iii) The offending involved considerable premeditation and a degree of planning;

iv) The moral culpability in regard to the accused in those circumstances is high;

v) There is a total of 14 charges, seven of which, the deception charges, are rolled up. Each of the charges are inherently serious, because the Parliament has prescribed a maximum penalty 10 years.

19 The only issue that Mr Behan had with that analysis of the prosecutor was the question as to premeditation. That matter was set out in his submission, Exhibit 6, and we discussed the matter. As I indicated during the plea, I disagreed with Mr Behan's submission that it was not premeditated. It is clear that the suggestion to effect this criminality was of Mr Matamata to Mr Nguyen. From that time, he maintained the scheme by way of the individual thefts of the cards, over a period of 17 months. In my view, there can be no other explanation of that but premeditated offending.

20 There was no issue from Mr Behan that this criminality was aggravated by the fact of it being a breach of trust insofar as his employers are concerned. I accept the analysis of Mr Behan, that in the sense of the normal utilisation of the phrase 'white collar crime', Mr Matamata did not hold a responsible financial position such as an accountant, if we refer to *McLean* (2000) 2 VR 118, [44], the prisoner was a member of senior management with his own budget.

21 However, albeit not white collar, one could describe it as blue collar financial crime. The fact was that Mr Matamata had unrestrained access to these cards. He was a trusted leading hand and as such, was well aware of the clearly lax process of financial control over these cards adopted by his employer. He despite, the trust with which he was employed in his position as a leading hand, chose to take advantage of such lax process and did so persistently, to his own benefit, over the period of 17 months.

22 As I have already described, that benefit was clearly financial. As I understand the position, it went to finance his gambling habit and to pay

various household bills. True it is he did not end up with what sometimes is called the trappings of this type of enterprise of white-collar crime, properties and Mercedes Benzes et cetera, et cetera, et cetera. However, such has to be looked at relatively, the benefits enabled him not only to allow his household to function in a manner in which it could not have otherwise, and facilitate his gambling addiction. Hence there cannot be any issue with the fundamental proposition put by the prosecutor, that general deterrence here is particularly important.

23 As to the impact on the victim, I have signed the compensation order. I accept the impact as set out of $130,211.51. As to the issue of what actual impact that has on that particular company, it does not seem necessary for me to make that determination. I do not intend to conclude the issue between counsel as to what impact that loss had, I just accept that is a significant loss for a company.

24 Insofar as the ascertaining of the appropriate sentence, I was taken to a number of authorities. I accept by way of comity the decisions of my brothers and sisters and indeed myself that were referred to. I refer to *Dwyer* [2015] VCC 554, *Fusea* [2016] VCC 1708, *Kashani* [2019] VCC 1669, *Burgess* [2019] VCC 1742 and *Lloyd* [2017] VCC 1417. In addition of course, was mentioned, as is always with white collar crime, *Bulfin* [1998] 4 VR 114, and the Court of Appeal decision of *SD v R* [2013] VSCA 133. All such decisions I have considered, they present as guideposts in the calculus of sentencing that has to be exercised by me. I should say, I have also looked at the sentencing snapshot appropriate to the s.82(1) charges, No.229, being a snapshot from April of 2019

25 As I say, taking into account all those cases as guideposts, in the end of course, Mr Matamata, what I have to deliver for you, pursuant to the determination of the High Court in *Dalgliesh* [2017] 91 ALJR 1063, 1075 is a

just individualised sentence upon the circumstances of this case, indeed, individualised in regard to each charge. That is what you are entitled to as a matter of justice and I hope that I render that.

26 Taking into account all of those circumstances and authorities, it was the submission of the prosecutor that the appropriate sentence was a straight sentence with parole, and that an order under s.44 of the *Sentencing Act* was not appropriate.

27 Coming then to the plea of Mr Behan, as I said, the first written submission is Exhibit 1 dated 1 September 2020. Mr Behan lodged a further submission, Exhibit 6, dated 10 September 2020 and spoke to that first submission. The first matter he submitted was that this was an early plea. I accept that it is utilitarian, it assists justice, it is also further utilitarian because of the current crisis that this community is going through and the principles set out in the Supreme Court case of *Bourke* [2020] VSC 130. His client is entitled to the appropriate discount therefore.

28 There has been, to a degree, some delay in Mr Matamata having to await justice. He, certainly insofar as his employment has been positive during that period of 20 months since he was charged. He worked as an excavator with the Winslow company and in May of this year, was appointed as a team leader with United Civil Works.

29 The proposition that he is remorseful has been put not only by the way of his plea, but by the steps taken. I accept totally his letter of apology, Exhibit 3 and I endorse your comments, Mr Matamata, that your criminality was an act of stupidity and the biggest mistake of your life. As to that remorse, I accept the comments and very strong support that you had from your current employer Mr Kruckel, from United Civil Works and his testimony as to the reliability that he sees that you present, the reasons why he employed you

and in particular, his knowledge of these crimes and his support of the remorse that you have expressed. Further support for you comes from your father-in-law and partner and those matters are set out in Exhibit 5.

30 As I said, the explanation for your behaviour is perhaps rooted in your background, I am not sure. There is no psychological report, but clearly from whatever aspect one looks at your background, you have been subject to a very difficult upbringing. You have, however, exited yourself from those circumstances, you have an excellent work record and as your partner says, you have been an excellent father. Unfortunately, since the age of 19, you have been involved in gambling. Whether that can be traced to your very difficult upbringing, I am not sure, but I take into account in sentencing your addiction.

31 You come before the Court with a blemish-free record. There are, of course, as made clear in *Bulfin* and many of the cases, suggestions that good character must, insofar as its role in this sentencing, be tempered to a degree, because without this good character, you would not have had the freedom to abuse your employer's trust. However, I should make the point that good character is never eliminated, and always is applicable. It seems to me particularly applicable in your case to get to the age of 32 without any priors, given your background. Such perhaps indicates the impact of the gambling in your life.

32 As to your rehabilitation, I accept, as I have already said, your positive remorse. I am not too certain as to whether you have the capacity to fully effect rehabilitation without assistance. The fact that you continued to gamble up until approximately May last year, as set out in Exhibit 2, and that you did not finally seek counselling until August of 2020 does raise a question mark about your rehabilitation. What it confirms is, as with any addiction, you certainly need assistance.

33 The further matter put was that in regard to any gaol sentence that I might impose upon you, you will be going into a situation that is impacted by the current pandemic. I accept that persons who are gaoled have to undergo not only the initial 14 days lockdown, but the risk thereafter of contracting the virus, problems of lockdown, problems of restriction of programs and indeed, no visitors whatsoever.

34 I also accept that any sentence in regard to you involving imprisonment is going to cause family hardship. You are the sole provider for your wife and four children. However, as you yourself said, there is only one person who bears fault for your crimes. It is particularly concerning to the Court that despite you having the upbringing you did, and the difficulties with your own father, you should have taken such dramatic steps to place your own family at risk of you being sentenced to gaol.

35 The final factor that was relied upon by Mr Behan was the issue as to the risk of your deportation. These are administrative matters of which this Court has no role. We understand, however, the proposition is that any person sentenced to a period of imprisonment of twelve months is subject to deportation. It seems, if I might say so, without any criticism of the Judge involved, if one reads the case of *Burgess*, that was very much to the fore in the sentence provided.

36 I accept the propositions put by your counsel as to the principles in *Guden v The Queen* [2010] VSCA 196, [27], as to the burden such risk will have upon you in gaol and of course, I take into account the risks to you as to the loss of opportunity to continue to work and raise your family in this country.

37 It was by way of the totality of those factors that your counsel sought, a community correction order, with no period of imprisonment. Alternatively, should I be of the view that imprisonment must be imposed, which I tell you,

unfortunately, Mr Matamata, I am, Mr Behan submitted that a combined order should be passed. In that regard, the Community Services Report, which has been tendered this morning, was obtained. There are certainly positive comments about you in that report. However, it seems to me that, rather than understand what the Court was requesting, the authors of the report seem to be concentrated on issues which are presented by the COVID-19 crisis at the moment, which impact upon their capacity to deliver programs. Anyway, I do not know why that was so, but I take the positives into account.

38 I have in the final calculus, after taking account of all the factors, in particular the seriousness of your offending, the prosecutor's submissions, the totality of the factors put before me by your counsel, concluded that *Boulton* [2014] VSCA 342 principles are applicable, and that it would be appropriate to order a combined order under s.44.

39 Mr Behan, the report indicates your client is aware of the requirements of such an order and that he would consent to it. Despite what is said in that report, it seems to me fundamental to ensure your client does not get into this sort of trouble again, that he be subject to supervision, that he be subject to a reoffending program, in particular, in regard to gambling and indeed, that he be given the assistance of any mental treatment he might need, given his background.

40 I do not intend to impose any other conditions but those therapeutic conditions. My intent would be that the community correction order would be for a period of two years, once he was released from prison. Do you need to talk to your client? You can indicate to me that he would consent to that?

41 MR BEHAN: May I remove this, Your Honour?

42 HIS HONOUR: Yes.

43 MR BEHAN: I can indicate that Mr Matamata would most certainly consent to that.

44 HIS HONOUR: Yes. Mr Matamata, if you stand up please? As I say, in taking account of all the matters put to me, I have determined that it is not appropriate to accept your counsel's submission that your criminality should be met with a community correction order. Its persistence and seriousness is such that it must be met, to effect the principles of general deterrence with a period of imprisonment. I impose the following periods of imprisonment upon you in regard to the charges of which you have pleaded to this Court.

45 In regard to Charge 1, I impose a period of imprisonment of three months. I will do these in order, so that they reflect the criminality in each matter. In regard to Charge 8, a period of imprisonment of six months. In regards to Charge 2, a period of imprisonment of four months. In regard to Charge 9, a period of imprisonment of six months. In regard to Charge 3, a period of imprisonment of six months. In regard to Charge 10, a period of imprisonment of nine months. In regard to Charge 4, a period of imprisonment of six months and Charge 11, a period of imprisonment of four months. In regard to Charge 5, a period of imprisonment of six months and in regard to Charge 12, a period of imprisonment of six months. In regard to Charge 6, a period of imprisonment of six months. Charge 13, a period of imprisonment of three months. In regard to Charge 7, a period of imprisonment of six months. In regard to Charge 14, a period of imprisonment of four months.

46 Taking the nine months imposed on Charge 10 as the base sentence, I order that one month of the sentences imposed in Charge 3, 4 and 12 be served cumulatively upon each other and upon the base sentence, making a total of three months, to be served cumulatively upon the base sentence of nine months, making a total effective period of imprisonment of 12 months.

47 In addition to that period of imprisonment, I impose upon you in regard to all charges a community correction order for a period of two years. Mr Matamata, it is my intent that, in order to assist you, the following conditions by way of therapy be imposed on you:

(i) That you be subject to supervision;

(ii) That you be subject to courses or programs which assist you to ensure you do not reoffend in again. In particular, that you overcome this gambling addiction;

(iii) Finally, that you get assistance with any mental issues.

48 I have signed the order under s.86. I am required by Parliament, Mr Matamata, to indicate to you what the benefit to you is of pleading guilty on the basis of one factor only, despite the multitude of factors that I have had to take into account in your sentencing. Doing as best I can to comply with the requirements of Parliament, can I tell you that, had you not pleaded guilty, the sentence that you would have got is not 12 months' gaol, with a community correction order, but a period of two and a half years' gaol, with a minimum period of one year and eight months to serve before being eligible for parole.

49 I have said about the s.86, I have made that. Mr Matamata, it is very important for you, and I have a lot of sympathy given your background, but as you say your own stupidity has led you to make this very serious mistake and placed your family in jeopardy. Given your own background, I am sure that you want to ensure that you effect rehabilitation and that you never again place your family in such jeopardy. Gentlemen, any matters that I have not attended to? Mr Prosecutor?

50 MR PORCEDDU: Sorry, Your Honour, I was just on mute. No, no Your Honour and I have checked the figures, they seem to be fine.

51 HIS HONOUR: Thank you. Mr Behan?

52 MR BEHAN: No Your Honour, that's - that all adds up.

53 HIS HONOUR: Mr Behan, do you want an opportunity to talk to your client now, or will you do that down in the cells, or is it easier to do it here? I don't know. Are you allowed in the cells anymore?

54 MR BEHAN: Yes Your Honour.

55 HIS HONOUR: Oh are you? Right.

56 MR BEHAN: I can go down and speak to him, Your Honour.

57 HIS HONOUR: Right, that's probably easier.

58 MR BEHAN: That's easier.

59 HIS HONOUR: Well, good luck Mr Matamata. Let's make sure that there's no more mistakes. You've got to sign the community correction order and that community correction order operates on your release and have they set a - Melton community office is the one to see.

60 MR BEHAN: That's the closest, Your Honour, yes.

61 HIS HONOUR: Mr Behan, if you just check this for me and get your client to sign it please?

62 MR BEHAN: Yes Your Honour. Yes Your Honour, if I may approach Mr Matamata?

63 HIS HONOUR: Thank you. Yes, thank you gentlemen. Mr Matamata can be taken down.

64 MR BEHAN: As Your Honour pleases.

65 MR PORCEDDU: As Your Honour pleases. Your Honour, could I just ask that a copy of the CCO report be sent to myself and my instructor please?

66 HIS HONOUR: Oh, didn't you get it?

67 MR PORCEDDU: No, the signed CCO.

68 HIS HONOUR: Oh I'm sorry, the actual - yes, sure.

69 MR PORCEDDU: I'm - - -

70 HIS HONOUR: Well, unlike some of them who are already in remand, Mr Prosecutor, we've actually got a signed copy to send you.

71 MR PORCEDDU: Thank you, Your Honour.

72 HIS HONOUR: And can I thank both counsel for their assistance in the matter. There's a lot of issues involved in this sentence.

73 MR PORCEDDU: Your Honour pleases.

74 HIS HONOUR: Thank you.

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